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**APR 09 2010**

**OFFICE OF PETITIONS**

COOPER & DUNHAM, LLP  
30 Rockefeller Plaza  
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NEW YORK NY 10112

In re Patent of Green et al. :  
Patent No. 7,589,253 :  
Issue Date: September 15, 2009 :  
Application No. 09/981,124 : ON APPLICATION FOR  
Filed: October 17, 2001 : PATENT TERM ADJUSTMENT  
Atty Docket No. 72242-AB/JPW/ :  
GJG/LCM :

This is in response to the PETITION TO CORRECT PATENT TERM ADJUSTMENT (PTA) INDICATED IN NOTICE OF ALLOWANCE filed July 29, 2009. Applicants submit the correct patent term adjustment to be indicated on the patent is five hundred eighty (580) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE.**

***The instant petition was filed on July 29, 2009, prior to the September 15, 2009 issuance of the patent.*** Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under


§ 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office could not make a determination on the correctness of the patent term adjustment until the patent issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent or even the filing date of the request for continued examination is premature. Accordingly, it is appropriate to dismiss as premature such a request.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

The Office acknowledges receipt of a Renewed Petition to Correct Patent Term Adjustment (PTA) Indicated in Notice of Allowance, filed November 6, 2009. This request will be considered under 37 CFR 1.705(d) in due course.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

  
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Office of Petitions